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John Richard Brinson, Jr.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR 17-MJ-01487
)	
Plaintiff,)	BRIEF FILED BY DEFENDANT
)	JOHN RICHARD BRINSON, Jr.
)	FOR HEARING IN REGARD
v.)	TO DEFENDANT'S
)	DETENTION PURSUANT TO
)	CRIMINAL COMPLAINT
)	
JOHN RICHARD BRINSON, Jr.,)	DATE: [TO BE SET]
)	TIME: [TO BE SET]
)	CTRM: Hon. John E. McDermott
Defendant)	
)	
)	
)	

MEMORANDUM OF POINTS AND AUTHORITIES

I.

**DEFENDANT SHOULD BE RELEASED
FORTHWITH DUE TO HIS ONGOING
ILLEGAL DETENTION IN VIOLATION
OF FED. R. CRIM. P. 5.1**

A. Introduction

This prosecution was initiated by the filing of a Criminal Complaint in the Central District of California (“CDCal”), as to which Mr. Brinson made his initial appearance in Fresno in the Eastern District of California (“EDCal”) on the out-of-district warrant. The issues at hand pertain to the apparent detention of Mr. Brinson pursuant to the Criminal Complaint beyond the 14-day time limit set forth in Fed.R.Crim.P. 5.1 where (1) no preliminary hearing has been conducted; (2) Mr. Brinson apparently did not waive prelim at the initial appearance in Fresno; (3) Mr. Brinson apparently did not agree to extend the deadline under Rule 5.1 and (4) no Indictment or Information has been filed in the interim.

The defense requests immediate release of Mr. Brinson or, at the very least, an immediate hearing at which the government demonstrates that notwithstanding the circumstances stated herein, Mr. Brinson’s continued detention is legally valid.

B. Procedural History Relevant To This Proceeding

A copy of the Pacer docket from EDCal is attached hereto as Exhibit A.

A copy of the Pacer docket from CDCal is attached hereto as Exhibit B.

On June 12, 2017, the government filed the Criminal Complaint in this action.

On June 14, 2017, Mr. Brinson made his initial appearance before Magistrate-Judge Stanley A. Boone in EDCal on the out-of-district warrant from CDCal. The Pacer docket from EDCal (Exh A, Pacer entry #4) states in part:

**The defendant is advised of the charges and rights,
waived reading and Identity Hearing.**

On June 16, 2017, a detention hearing was conducted before Judge Boone, at which time Mr. Brinson was detained and ordered transported to the Central District of California. (Exh A, Pacer entry #5).

On June 19, 2017, the Court in EDCal filed its “Commitment To Another District,” (Exh A, Pacer entry #7), which contains, inter alia, a directive to the U.S. Marshals “to transport that defendant with a certified copy of this commitment forthwith to the district of offense as specified above(.)”

Neither the Pacer docket in EDCal, nor the documents accessible on the docket by hypertext links, contain any indication as to whether Mr. Brinson waived his right to a preliminary hearing during his appearances in EDCal.

On July 21, 2017, Mr. Brinson made his initial appearance in CDCal on the Criminal Complaint, before duty Magistrate John E. McDermott, at

1 which time he was detained. Defense counsel raised on the record the
2 concern that the five - week lapse of time in bringing Mr. Brinson to this
3 district without an intervening indictment necessitated an inquiry into
4 whether Fed.R.CrimP. 5.1 had been complied with, specifically whether Mr.
5 Brinson had waived his right to a preliminary hearing during his
6 appearances in EDCal. As this information was unavailable to the parties
7 and Court at the July 21 appearance, the Court directed the parties to
8 inquire with EDCal; and if the concerns regarding noncompliance remained,
9 to contact the Court to set this matter on calendar.
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11 On July 24, 2017, defense counsel spoke by phone with DFPD
12 Grantham Reed [(559)-487-5561], who represented Mr. Brinson in the
13 proceedings in EDCal. Mr. Reed stated that to the best of his recollection, no
14 waiver of prelim was filed in EDCal.

15 On July 25, 2017, defense counsel received an email from government
16 counsel, AUSA Vanessa Baehr-Jones, stating that she is ordering the tapes of
17 the proceedings in EDCal. Defense counsel agrees that this is the best way to
18 proceed and commends government counsel for taking the initiative in this
19 regard, with the only reservation being the added delay in getting this matter
20 resolved due to the time required to prepare the tape and send it to
21 government counsel.
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23 Accordingly, the defense requests that this Court set the matter on
24 calendar as soon as possible to address what now appears to be a violation of
25 Fed.R.Crim.P. 5.1 and Mr. Brinson's right to be released.
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BY ITS TERMS, FED.R.CRIM.P. 5.1
SETS A FIRM DEADLINE OF 14 DAYS
IN WHICH TO CONDUCT A PRELIMINARY HEARING
ON A CRIMINAL COMPLAINT WHEN A
DEFENDANT IS IN CUSTODY

The requirements set forth in Rule 5.1 are codified in 18 U.S.C.S. §3060 (Exhibit E), under which a failure to timely hold a preliminary hearing requires that a defendant “shall be discharged from custody . . . without prejudice . . . to the institution of further criminal proceedings against him upon the charge upon which he was arrested.” See 18 U.S.C. § 3060(d).

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1 Here, the 14-day deadline passed prior to the end of June without a
2 preliminary hearing being conducted; an indictment or information being
3 filed; or any agreement by Mr. Brinson to either waive prelim or extend the
4 14-day deadline. The passage of this deadline has resulted in the expiration
5 of the Criminal Complaint as a charging instrument. Accordingly, it appears
6 that Mr. Brinson's detention for the better part of a month (i.e., approx June
7 28 to present) has been illegal and that he is therefore entitled to immediate
8 discharge from custody.
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11 **DATED: July 25, 2017**

Respectfully Submitted,

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13 /S/

14 **GREGORY NICOLAYSEN**
15 **Counsel for Defendant,**
16 **John Richard Brinson, Jr.**
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